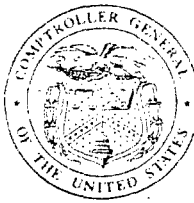


DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

9365

FILE: B-194015

DATE: March 7, 1979

MATTER OF: American Drafting and
Laminating Co., Inc.

DLG-01098

DIGEST:

[Protest Alleging Below-Cost Bid Price NOT Reviewable by GAO]

Submission of below-cost bid price is not valid basis upon which to challenge award. Acceptance of bid requires determination of bidder responsibility which will not be reviewed by GAO except in circumstances not applicable to this case.

DLG-00923
American Drafting and Laminating Company protests any award to Copier and Control Systems, Inc., (Copier) under invitations for bids Nos. N00189-79-B-0025 and N00189-79-B0026 by the Naval Supply Center, Norfolk, Virginia. The protester contends that Copier submitted bid prices based on material and labor costs below its actual costs. Because this protest raises issues which are not reviewable by GAO, it is dismissed. ABC 00019

Whether a bidder can perform at its bid price relates to the bidder's responsibility. Agnew Tech-Tran, Inc., B-184272, July 14, 1975, 75-2 CPD 32. We do not review the contracting officer's responsibility determination unless either fraud or bad faith is shown on the part of the procuring officials or where the solicitation contains definitive responsibility criteria which allegedly have not been applied. Central Metal Products, Incorporated, 54 Comp. Gen. 66 (1974), 74-2 CPD 64; Systems and Programming Resources, Inc., B-192190, August 16, 1978, 78-2 CPD 124. Neither exception applies in this case.

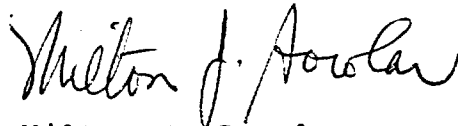
Moreover, we have consistently held that the submission of a below-cost bid, or "buying in", is not a valid basis upon which to challenge an award. Futronics Industries, Inc., B-185896, March 10, 1976, 76-1 CPD 169.

0-03947

dec

Although the Defense Acquisition Regulation § 1-311 (1976 ed.) states that "buying in is not a favored practice", it does not legally proscribe the submission of below cost bid prices. The regulation merely cautions contracting officers to assure that losses are not recouped during contract performance or through "follow-on" contracts.

The protest, therefore, is dismissed.

A handwritten signature in dark ink, appearing to read "Milton J. Socolar". The signature is fluid and cursive, with the first name "Milton" being the most prominent part.

Milton J. Socolar
General Counsel